

What Has Happened Since Preliminary Approval of the Settlement?

- I. Notice to the Class
- II. Survey of Consumer Opt-Outs
- III. Objections to the Settlement

Notice to the Class

- Notice to consumers and TPPs by direct mail and publication
- Web page (www.gsksettlement.com) established to disseminate information and forms to class members
- Call center established to answer class member's questions about the Settlement

Notice to Consumers

- Direct Mail: 2.5 Million letters to Part B Consumers enclosing Notice, Claim Form and Opt-out Form at cost of \$1.3 Million
- Publication: Approximately \$1.8 Million spent on publication of notice in national media from February to March, 2007 including:

- Parade Magazine
- USA Weekend
- Better H&G
- Jet Magazine
- Sports Illustrated

- National Geographic
- People
- Reader's Digest
- Selecciones (Spanish)
- Time
- US News & World Rpt

Notice to TPPs

- Direct Mail: 43,000+ letters to TPPs nationally enclosing notice and claim form
- Publication: Noticed published in national TPP trade magazines in February 2007 including:

- National Underwriter Life & Health

- Human Resources Magazine

TPP Claims / Opt-Outs

- 2,028 claims from TPP class members
- Processing/auditing of claims underway. Process includes:
 - Verifying receipt of correct data
 - Notification of claim deficiency/time to cure
 - Elimination of any overlap in claims between TTPs or among TTPs & ISHPs
 - Calculation of recognized claims for each TTP
- Based on past experience 9-12 months before checks mailed

TPP Claims / Opt-Outs

- 12 TPP Opt-Outs
- Listed on Exhibit 4 to Declaration of Thomas Glenn
- Each Opt-Out relatively small in size
- Will not result in a large refund to GSK

Consumer Claims / Opt-Outs

- To date 12,895 claims filed by Consumer Class Members
- Processing/Auditing of claims underway. Process includes:
 - Verifying receipt of valid proof of payment
 - Notification of deficiency/ time to cure
 - Audit of sample of claims and outliers
 - Calculation of recognized claim for each consumer
- Class counsel has requested that CCS prioritize processing of consumer claims
- Based on past experience checks mailed in 5-6 months

Consumer Claims/Opt-Outs

- CCS has entered approximately 2000 consumer claims into its database to date
- Based on these *unaudited* claims to date the average consumer claim is \$209
- Based on this preliminary average, total of 12,895 claims results in total payment to consumer claimants of \$2.7 Million

Consumer Claims / Opt-Outs

- 21,365 Consumers filed requests for exclusion
- Evidence that some consumers inadvertently filed for exclusion while intending to file a claim
- Suspicion that many consumers who opted out were not in fact class members (did not pay out of pocket)

Opt-Out Survey Results

- 15.65% of survey sample determined to be actual class members
- Of this group, 16% indicated they intended to file a claim by submitting opt-out form
- Another 18% of the group contacted indicated that if given the chance they would file a claim and withdraw their opt-out
- Court approved the mailing of another claim form mailed to everyone who filed an exclusion, returnable by July 31st, 2007

Opt-Out Survey Results

- 21,365 consumer Opt-Out forms

15.65% of 21,365 = 3,343

minus 16% of 3,343 = 2,809

2,809 true Consumer Class Members intended to
exclude themselves from the Settlement

Opt-Out Survey Results

- Those surveyed gave a number of reasons for decision to Opt-Out
 - 30% could not find their proof of payment
 - 28% did not understand terms or whether they were eligible
- Only 2.5% said they wanted the preserve their right to sue on their own

Objections to the Settlement

- 1 TPP objection from Health Care Services Corporation (Docket No. 4416). Withdrawn.
- 1 Consumer objection from Demra Jordan (Docket No. 4403).
- 1 objection from Commonwealth of PA (Docket No. 4427).

Objections to the Settlement

- Demra Jordan provides no substantive basis for objection other than an unsupported statement that the settlement class cannot be certified “due to a lack of predominance of common issues.”
- This Court has addressed all aspects of class certification, including issues related to predominance under Rule 23 in its August 16, 2005 Order.

Objections to the Settlement

- Commonwealth of PA objects to the participation by TPPs and ISHPs in any mediation over excess consumer funds
- PA entered into its' agreement with GSK on 2/12/07, six months after the Settlement Agreement was made public
- PA's separate settlement agreement expressly acknowledges the terms set forth in the Settlement Agreement regarding the mediation
- PA accepted those terms and \$809,000 as a participating state under the terms of the Settlement Agreement

**Why is the Settlement Fair,
Adequate and Reasonable?**

Factors to Consider

- Comparison of Settlement with likely results of litigation
- Stage of the litigation at settlement
- Quality of Counsel
- Conduct of the Negotiations
- Risk, complexity, expense and duration of the litigation

In re Compact Disc., 216 F.R.D. at 206

Comparison of Settlement to Likely Results of Litigation

- Damages Estimates from Declaration of Raymond Hartman in Support of Plaintiffs' Claims of Liability and Calculation of Damages (Filed Under Seal on 12/15/05)
- Dr. Hartman used a zero threshold for liability and damages for Class 1 and Class 2 (But for AWP=ASP)
- Class 1 (Part B Consumers) = \$7.7 Million
- Class 2 (MediGap TPPs) = \$38 Million
- Class 3 (TPPs and Consumers) = \$370 Million

Total Single Damages = \$415 Million

Comparison of Settlement to Likely Result of Litigation

Total Recovery = \$65.5M + \$1.2M from

Litigating State Fund = \$66.7 Million

\$66.7M / \$415M = Total Recovery of 16% of
Damages

Comparison of Settlement to Likely Result of Litigation

Consumer Damages

Class 1 = \$7.7 Million

Class 3 damages to consumers approx 6.5% of total or
6.5% of \$370M = \$24 Million

Total Consumer Damages = \$31.7 Million

Total Consumer Damages = 7.6% of total damages yet
they receive 30% of the Fund

Comparison of Settlement to Likely Result of Litigation

TPP Damages

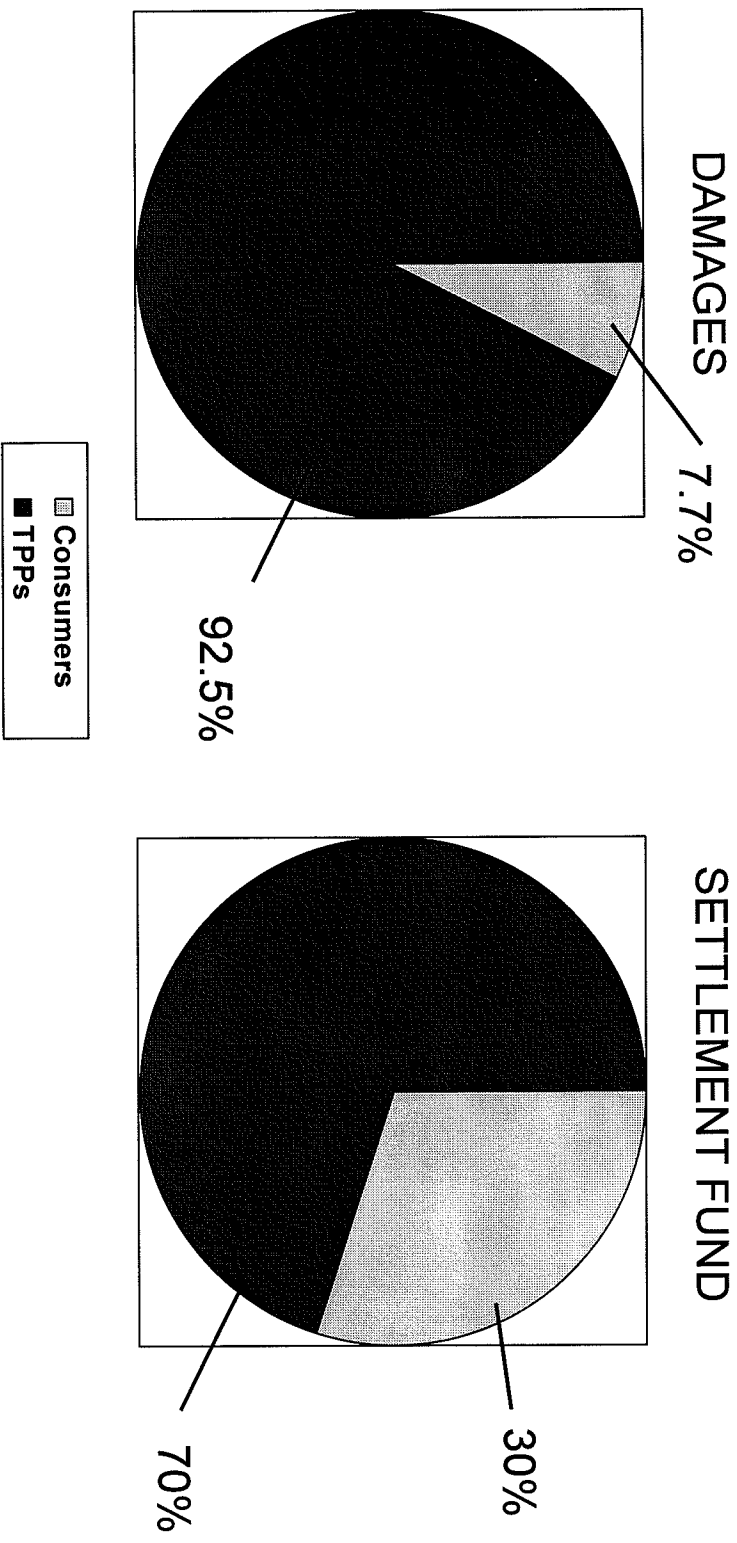
Class 2 = \$38 Million

Class 3 damages to TPPs approx 93.5% of total or
93.5% of \$370M = \$346 Million

Total TPP Damages = \$384 Million

Total TPP Damages = 92.5% of total damages yet they
receive 70% of the Fund

Damages vs. Recovery



Factors to Consider

- **Stage of the litigation at settlement**
- **Quality of Counsel**
- **Conduct of the Negotiations**
- **Risk, complexity, expense and duration of the litigation**

Attorneys' Fees

Aggregate Loadstar Crosscheck

$$\frac{\$52,279,201 \text{ (total loadstar)}}{\$21,615,000 \text{ (fee request)}} = .38 \text{ multiplier}$$

$$\frac{\$52,279,201 + \$5,561,128 \text{ (expenses)}}{\$21,615,000} = .34 \text{ multiplier}$$

“GSK Only” Crosscheck

- Assume 75% of work done for Track I
- 5 Track I Defendants (20% each)

\$57M loadstar x 75% x 20% = \$8.55M

\$5.6M expenses x 75% x 20% = \$840K

\$21,615,000 fees - \$840K GSK expenses = \$20.77M

$$\frac{\$8.55\text{M}}{\$20.77\text{M}} = 2.4 \text{ multiplier}$$